

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION DOCUMENT CONTROL

AT RICHMOND, APRIL 25, 2007

COMMONWEALTH OF VIRGINIA, ex rel.

APR 27 2007 9:55

STATE CORPORATION COMMISSION

CASE NO. CLK-2007-00003

Ex Parte: In re: Uniform Commercial
Code Filing Rules

ORDER TO TAKE NOTICE

WHEREAS, § 8.9A-526 of the Code of Virginia authorizes the State Corporation Commission ("Commission") to promulgate rules governing the practices of the Clerk's Office when acting as the filing office for financing statements and associated records permitted to be filed under Title 8.9A of the Code of Virginia;

WHEREAS, effective July 1, 2001, the Commission adopted rules to implement Title 8.9A of the Code of Virginia, which are set forth at 5 VAC 5-30-10 et seq. ("UCC Filing Rules");

WHEREAS, effective July 1, 2007, Chapter 239 of the 2007 Acts of Assembly amends § 12.1-21.1 of the Code of Virginia, which prescribes the fees charged by the Clerk of the Commission for providing and certifying a copy of a Uniform Commercial Code record; and

WHEREAS, the Clerk of the Commission has proposed corresponding changes to 5 VAC 5-30-40 as well as various other amendments to the UCC Filing Rules;

IT IS THEREFORE ORDERED THAT:

(1) The proposed regulations are appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before June 1, 2007. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. CLK-2007-00003. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(3) The proposed regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/caseinfo.htm>.

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Manager of the Uniform Commercial Code section of the Clerk's Office, who shall forthwith mail a copy of this Order, together with the proposed regulations, to such interested persons as he may designate.

CHAPTER 30
UNIFORM COMMERCIAL CODE FILING RULES

PART I
GENERAL PROVISIONS

5 VAC 5-30-10. Scope; severability.

This chapter governs the filing and handling of records in the Clerk's Office of the State Corporation Commission pursuant to Title 8.9A of the Code of Virginia. Each provision of this regulation chapter is severable from all other provisions.

5 VAC 5-30-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active record" means a UCC record that has not reached the one-year anniversary of its lapse date.

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

"File number" shall have the meaning prescribed by § 8.9A-519(b) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the filing office's information system to correct an error by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

"Inactive record" means a UCC record that has reached the first anniversary of its lapse date.

"Individual" means a natural person, living or deceased.

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(79) of the Code of Virginia.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC record" means an initial financing statement, an amendment, and a correction or filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

5 VAC 5-30-30. General filing and search requirements.

A. UCC records may be tendered for filing at the filing office as follows:

1. By personal delivery, at the filing office street address;
2. By courier delivery, at the filing office street address; or
3. By postal delivery, to the filing office mailing address.

B. The filing time for a UCC record delivered by ~~these~~ any of the foregoing methods is the time the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected.

C. UCC search requests may be delivered to the filing office by any of the ~~means~~ methods by which UCC records may be delivered to the filing office. ~~A search request for a debtor named on an initial financing statement may be made on the initial financing statement form if the form is accepted and the relevant search fee is also tendered.~~

5 VAC 5-30-40. Forms, fees, and payments.

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.
2. The forms set forth in § 8.9A-521 of the Code of Virginia shall be accepted.
3. ~~A form for the relevant filing of a UCC record approved by the International Association of Corporation Administrators on or after July 28, 1998;~~ The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (http://www.scc.virginia.gov/division/clk/fee_ucc.htm) shall be accepted.
4. The filing officer may approve ~~additional~~ other forms for acceptance, including additional forms promulgated by the International Association of ~~Corporation~~ Commercial Administrators.

B. Fees.

1. The fee for filing and indexing a UCC record communicated on paper is \$20.
2. The fee for a UCC search request communicated on paper is \$7.00.
3. The fee for UCC search copies is ~~\$1.00 for each of the first two pages and 50¢~~ \$.50 for each ~~additional~~ page. The fee for affixing the seal of the commission to a certificate is ~~\$1.00~~ \$3.00.

C. Methods of payment. Filing fees and fees for services provided under this regulation may be paid by the following methods:

1. Payment in cash shall be accepted if paid in person at the filing office.
2. Personal checks, cashier's checks and money orders made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

D. Overpayment and underpayment policies.

1. The filing officer shall notify the remitter of the amount of any overpayment exceeding \$24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing officer shall refund an overpayment of \$24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

2. Upon receipt of a UCC record with an insufficient filing fee, the filing officer shall return the record to the remitter with a notice stating the deficiency and shall retain the filing fee.

- ~~3. If a filer requests a name search at the time a UCC record is filed, the name searched will be the debtor name as set forth on the form. If the remitter furnishes the appropriate fee for filing but omits the search fee, the UCC record will be filed subject to 5 VAC 5-30-50 and the search will not be performed.~~

E. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

PART II

RECORD REQUIREMENTS

5 VAC 5-30-50. Acceptance and refusal of records; continuation statements.

A. The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing officer does none of the following:

1. Determine the legal sufficiency or insufficiency of a record;
2. Determine that a security interest in collateral exists or does not exist;
3. Determine that information in the record is correct or incorrect, in whole or in part; or
4. Create a presumption that information in the record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. If the lapse date falls on a Saturday, Sunday or other day on which the filing office is not open, then the last day on which a continuation statement may be filed is the last day the filing office is open prior to the lapse date.

C. Except as provided in 5 VAC 5-30-40 D, if the filing officer finds grounds to refuse a UCC record, the filing officer shall return the record to the remitter and shall retain the filing fee.

D. Nothing in this chapter ~~prevents~~ shall prevent a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing officer is under no obligation to do so and may not, in fact, have the resources ~~to do so or~~ to identify such potential defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused, the filing officer shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing. The filing officer shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally tendered for filing.

PART III

RECORD FILING AND SEARCHES

5 VAC 5-30-60. Filing and data entry procedures.

A. The filing office may correct errors of made by its personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification, the filing officer shall file a filing officer statement in the UCC information management system identifying the record to which it relates, the date of the correction, and

explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing a correction statement pursuant to § 8.9A-518 of the Code of Virginia.

C. 1. A UCC record tendered for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the first, middle and last names and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, ~~filers should be aware that~~ the inclusion of names in an incorrect field or ~~failures the failure~~ to transmit names accurately to the filing office ~~might~~ may cause ~~filings a financing statement~~ to be ineffective.

D. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

5 VAC 5-30-70. Search requests and reports.

A. The filing officer maintains for public inspection a searchable index for all UCC records of ~~UCC documents~~. The index shall provide for the retrieval of all filed records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made only on the National Information Request Form (Form UCC11) and shall contain the following information:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.

2. The name and address of the person to whom the search report is to be sent.

3. The appropriate fee shall be enclosed, payable by a method described herein.

~~C. If a filer requests a search at the time a UCC record is filed the name searched will be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC record is filed.~~

~~D.~~ C. Search requests may contain ~~any of~~ the following information:

1. A request that copies of records found in the search be included with the search report, or

~~2. A request to limit the copies of records by restricting the search to a locality or a filing date or a range of filing dates, or~~

~~3.~~ 2. Instructions on the mode of delivery desired, if other than by ordinary mail, which request shall be honored if the requested mode is available to the filing office.

~~E.~~ D. Search results are produced by the application of standardized search logic to the name presented to the filing officer. The following ~~requirements~~ criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search ~~criteria~~ request.

2. No distinction is made between upper and lower case letters.

3. Punctuation marks and accents are disregarded.

4. "Noise words" ~~include, but are not~~ limited to; "an," "and," "for," "of," and "the." The word "the" always will be disregarded and other noise words appearing anywhere except at the beginning of an organization name will be disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "ltd," incorporated to "inc."

5. All spaces are disregarded.

6. After using the preceding ~~subdivisions~~ criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unexpired or all initial financing statements in an alphabetical list.

~~F.~~ E. Reports created in response to a search request shall include the following:

1. The date the report was generated.

2. Identification of the name searched.

3. Identification of each unexpired initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

4. For each initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or prior to the report date.

5. Copies of all UCC records revealed by the search and requested by the requestor.

G. F. ~~During the statutory transition period of July 1, 2001, to July 1, 2006, the~~ The filing office may provide access to ~~a database~~ the searchable index via the Internet that produces search results beyond exact name matches. ~~The supplemental database shall not be considered part of the standard search logic and~~ Search results obtained via the Internet shall not constitute an official search of and will not be certified by the filing office.